IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

Crl.MC.No. 2978 of 2006()

CC.2764/2001 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

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PETITIONER:

MRS.ANIYAMMA RAVINDER,
W/O.MR.RAVINDER @ THAMPI ELIAS,
AGED 40, PATTASSERIL, 22/6-A/2, VAIKOM ROAD,
TRIPUNITHURA, NADAMA VILLAGE,
KANAYANNUR TALUK.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY

RESPONDENTS:

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1. M/S. ASSOCIATED CEMENT COMPANIES LTD.,
ZONAL OFFICE AT 4/88-D2, 2ND FLOOR, GOLDEN PLAZA,
CHITTOOR ROAD, COCHIN-18, REP. BY POWER OF
ATTORNEY AND SENIOR MANAGER, JAYANTH VIJAYA
BHASKAR SASTRI.

2. M/S. PATTASSERIL PVT.LTD.,
PATTASSERIL, 22/6-A/2, VAIKOM ROAD,
TRIPUNITHURA.

3. SMT.SUSAN JIMMY, W/O. JIMMY ELIAS,
PATTASSERIL, 22/6-A/2, VAIKOM ROAD,
TRIPUNITHURA.

4. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.P.M.KUNJIMOIDEENKUTTY
SRI.T.K.SAIDALIKUTTY
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SRI.RAKESH DAWNY KOKKATTU
PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 22/11/2006, ALONG WITH CRMC NO. 3002 OF 2006 AND 3026 OF 2006
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos. 2978 of 2006, 3002 of 2006

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and 3026 of 2006

Dated this the 22nd day of November 2006

O R D E R

The petitioners in these Crl.M.Cs are the accused in three separate prosecutions under Section 138 of the N.I.Act. In the said prosecution, the first accused is a company/firm. The petitioner is now shown to be representing the said company/firm. The complainant, when the complaint was filed, had shown the first accused as the firm/company alone. It was not shown that such accused firm/company is represented by any specified individual. The first accused has been shown as the company/firm only and it is not shown to be specifically represented by any individual. Cognizance was taken by the learned Magistrate.

2. Later, realising the defect in getting service effected, the complainant filed applications in all the three prosecutions praying that one of the co-accused (who is signatory to the cheque also) may be shown as representing the firm/company. Those applications were allowed by the court. Now the first accused firm/company is shown to be represented by a co-accused who is allegedly a signatory to the cheque. Such representative of the first accused is now alleged to be

the managing partner/director of the company/firm. The petitioners have come to this court complaining about the subsequent permission granted to the complainant to show the first accused as represented by them. It is contended that there is no provision for amendment and therefore the impugned orders are liable to be set aside.

3. I find no merit in this contention at all. The identity of the accused is very clear from the complaint as it was originally filed. That accused - the first accused is the drawer of the cheque, who maintains the account. That drawer is not a natural person. The drawer is a fictitious legal person. Such person, even if notice/summons is issued in the name of such entity, must certainly receive it through a natural person. Such company/firm must be represented in the prosecution by a natural person. What has been permitted by the learned Magistrate is only to permit/enable service on the first accused by a specified individual. By permitting that the learned Magistrate cannot be said to be committed any such gross error, indiscretion or perversity resulting in miscarriage of justice as to justify the invocation of the jurisdiction of this court under Section 482 Cr.P.C. Even if the first accused were not shown to be represented by any specified individual, service can be effected on such fictitious legal personality by service of notice on any one of the

officers in the manner permitted by the provisions of the code of criminal procedure for service of such entities. In these circumstances, in having clarified that service on the first accused firm/company can be effected through a specified representative of it, which representative allegedly had signed the cheque on behalf of such firm/company, I am of the opinion that no error/vice has been committed by the court warranting interference under Section 482 Cr.P.C. It is unnecessary, according to me to be drawn into any controversy to identify the sections of the code of criminal procedure to identify such power. Such power, to specify the person who can receive the notice on behalf of the company and who can represent the company before court is not to be categorised as any inherent power. That power is only incidental or ancillary to the power to proceed against the company and issue notice/summons to such company.

4. In the result, these Crl.M.Cs are dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006